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JENNER & BLOCK, LLP  
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CHICAGO IL 60611

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OFFICE OF PETITIONS

In re Application of :  
William David Shaefer, et al. :  
Application No. 10/829,493 : DECISION ON PETITION  
Filed: April 22, 2004 :  
Attorney Docket No. 37041-11449 :  
:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed November 13, 2008, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of the prior-filed nonprovisional applications set forth in the concurrently filed amendment.

The petition is **DISMISSED**.

The instant application was filed April 22, 2004. Therefore, since this application was filed after November 29, 2000, a petition under 37 CFR 1.78(a)(3), along with submission of a Certificate of Correction, is the appropriate avenue of relief to accept a late claim for the benefit of priority to a prior-filed non-provisional application after issuance of the application into a patent. See MPEP 1481

In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition fails to satisfy item (1) above. In this regard, the amendment submitted with the petition was filed concurrently with the payment of the issue fee is not acceptable. Accordingly, the required submission of a Certificate of Correction would be the appropriate avenue of relief to accept a late claim for the benefit of priority to a prior filed non-provisional application after

issuance of the application into a patent and satisfying the requirements of 37 CFR 1.78(a)(2)(i) must be submitted, along with a renewed petition under 37 CFR 1.78(a)(3).

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to the April M. Wise at (571) 272-1642.

/dab/  
David Bucci  
Petitions Examiner  
Office of Petitions